

1 JOSEPH M. CHARTER, P.C.
2 Joseph M. Charter, OSB #911581
3 800 West 8th Street
4 Medford, OR 97501
5 Telephone: (541) 779-9330
6 Facsimile: (541) 773-3653
7 Charter@AshlandOregon.org
8 -- Attorney for Defendants

9 UNITED STATES DISTRICT COURT
10 DISTRICT OF OREGON

11 BONNIE McELRATH,

12 Plaintiff,

13 Vs.

14 FISH RITE, INC., an Oregon Corporation;
15 JAMIE DORSEY, SR.; and BARBARA
16 DORSEY,

17 Defendants.

) Case No. CV-08-1159-KI

) ANSWER, AFFIRMATIVE DEFENSES
) AND COUNTERCLAIM

) (Jury Trial Demanded)

18 For ANSWER to Plaintiff's COMPLAINT, Defendants Fish Rite, Inc., an Oregon
19 Corporation, Jamie Dorsey, Sr., and Barbara Dorsey hereby admit, deny and allege as follows:

20 1.

21 Defendants admit the allegations of paragraphs 1, 2, and 5 of Plaintiff's Complaint. In
22 so admitting, Defendants do not admit to the validity of Plaintiff's claims.

23 2.

24 In response to paragraph 3 of Plaintiff's Complaint, Defendants admit that Jamie
25 Dorsey, Sr. and Barbara Dorsey are married and deny the remaining allegations of paragraph 3.

26 //

//

Page 1 – ANSWER, AFFIRMATIVE DEFENSES AND COUNTERCLAIM

JOSEPH M. CHARTER, P.C.
Attorney at Law
800 W. 8th Street
Medford, OR 97501
Tel. (541) 779-9330 Fax 541-773-3653

3.

In response to paragraph 4 of Plaintiff's Complaint, Defendants admit that Jamie Dorsey, Jr. is the son of Jamie Dorsey, Sr. and Barbara Dorsey, and deny the remaining allegations of paragraph 4.

4.

Except as specifically admitted, Defendants generally and specifically deny each and every allegation of the remainder of Plaintiff's Complaint and the whole thereof.

For a FIRST AFFIRMATIVE DEFENSE to Plaintiff's Complaint, Defendants allege:

5.

Plaintiff fails to state a claim against Defendants.

For a SECOND AFFIRMATIVE DEFENSE to Plaintiff's Complaint, Defendants allege:

6.

Plaintiff is stopped by her own actions from bringing these claims against Defendants.

For a THIRD AFFIRMATIVE DEFENSE to Plaintiff's Complaint, Defendants allege:

7.

Plaintiff has failed to effectively mitigate her alleged damages.

For a FOURTH AFFIRMATIVE DEFENSE to Plaintiff's Complaint, Defendants allege:

8.

Plaintiff is precluded from claiming wrongful discharge because adequate statutory remedies exist.

Page 2 – ANSWER, AFFIRMATIVE DEFENSES AND COUNTERCLAIM

1 For a FIFTH AFFIRMATIVE DEFENSE to Plaintiff's Complaint, Defendants allege:

2 9.

3 Plaintiff's First Claim for Relief is barred by the Oregon Workers' Compensation Act's
4 exclusivity provision, ORS 656.018(1)(a).

5 For a SIXTH AFFIRMATIVE DEFENSE to Plaintiff's Complaint, Defendants allege:

6 10.

7 Defendants are entitled to an offset for all benefits, wages, or other money Plaintiff has
8 received relating to employment or unemployment from the date her employment ended.

9 For a SEVENTH AFFIRMATIVE DEFENSE to Plaintiff's Complaint, Defendants
10 allege:

11 11.

12 Plaintiff's Fourth and Fifth Claims for Relief are barred by the statutes of limitations,
13 failure to exhaust her administrative remedies, and/or failure to allege required prerequisites to
14 suit.

15 For a FIRST COUNTERCLAIM against Plaintiff, Defendants allege:

16 12.

17 Plaintiff's claims are frivolous, meritless, unreasonable, without objectively reasonable
18 basis, and brought in bad faith. Defendants are therefore entitled to recover their reasonable
19 attorney fees, costs and disbursements, and expert witness fees pursuant to ORS 659A.885,
20 ORS 20.107 and 45 USC § 2000e-5(k).

21 WHEREFORE, having fully answered Plaintiff's Complaint, Defendants pray for
22 judgment in their favor, dismissing Plaintiff's Complaint, with prejudice, and awarding

23 Page 3 – ANSWER, AFFIRMATIVE DEFENSES AND COUNTERCLAIM

1 Defendants' attorney fees, costs and disbursements, and expert witness fees pursuant to ORS
2 659A.885, ORS 20.107, and 45 USC § 2000e-5(k), together with any other and further relief
3 the Court determines just and equitable in the circumstances.
4

5 DATED this 18th day of November, 2009.

6 JOSEPH M. CHARTER, P.C.

7 /s/ Joseph M. Charter

8 By: 

9 JOSEPH M. CHARTER, OSB #911581
10 Attorney for Defendants
11 E-mail: charter@ashlandoregon.org
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

CERTIFICATE OF SERVICE


I, Joseph M. Charter, attorney for Defendants Fish Rite, Inc., Jamie Dorsey, Sr. and Barbara Dorsey, hereby certify that I served the foregoing ANSWER, AFFIRMATIVE DEFENSES AND COUNTERCLAIM on the following interested party on the date forth herein below:

Charles J. Merten, OSB #630582
320 S.W. Stark St., Suite #205
Portland, OR 97204
-- Attorney for Plaintiff, Bonnie McElrath

Tel. No. (503) 227-2405
Fax No. UNKNOWN
E-mail: cjmerten@gmail.com

- ☐ by **mailing** a full, true, and correct copy thereof in a sealed, first-class postage-prepaid envelope, addressed to the individual as shown above, to the last-known office address of the individual, and deposited with the United States Postal Service at Medford, Oregon, on the date set forth below.
- ☒ by causing a full, true, and correct copy thereof to be **hand-delivered** to the individual at ~~the individual's last known address listed above~~ 800 W. 8th St., Medford, OR 97501.
- ☐ by sending a full, true, and correct copy thereof via **overnight courier** in a sealed, prepaid envelope, addressed to the individual as shown above, at the last known address of the individual as listed above.
- ☐ by **faxing** a full, true, and correct copy thereof to the individual at the fax number shown above, which is the last known fax number for the individual. The receiving fax machine was operating at the time of service and the transmission was properly completed.

DATED this 19th day of November, 2009.



JOSEPH M. CHARTER, OSB #911581
Attorney for Defendants